Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Implementation of the | ) | CC Docket No. 96-150 |
| Telecommunications Act of 1996: | ) | |
| | ) | |
| Accounting Safeguards Under the | ) | |
| Telecommunications Act of 1996 | ) | |

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") hereby responds to certain petitions for reconsideration of the Report and Order[1] in the above-captioned proceeding.

## I. THE SECTION 272 EXCEPTION TO THE 50% THRESHOLD FOR THE PREVAILING PRICE METHOD IS APPROPRIATE.

MCI asks the Commission to reconsider its decision to allow one exception to the 50% threshold required to qualify for prevailing price valuation.[2] MCI questions the basis for this exception which applies to products and services that are subject to the nondiscrimination requirements of Section 272.

This exception is clearly appropriate. Under the Commission's ruling in CC Docket No. 96-149, the Non-Accounting Safeguards Order,[3] a broad range of products and services that a Bell Operating Company ("BOC") sells to its Section 272 affiliate are subject to strict nondiscrimination requirements and other safeguards. These transactions will be conducted under

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[1] FCC 96-490, released December 24, 1996.

[2] MCI Petition for Reconsideration at 2.

[3] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996.

intense scrutiny by the Commission as well as state regulators, not to mention the "public inspection" required by Section 272(b)(5). The Commission has interpreted one of these nondiscrimination requirements (Section 272(c)(1)) to be a virtually unqualified nondiscrimination requirement applicable to any good, service, facility or information that a BOC provides to its Section 272 affiliate.[4]

The safeguards for products and services that are subject to Section 272's nondiscrimination requirements include detailed public disclosure of the terms and conditions of each transaction on the Internet within ten days,[5] review of transactions as part of each Section 271 proceeding to authorize a BOC to provide in-region interLATA services,[6] a comprehensive independent audit every two years,[7] and an expedited complaint process that must be completed within 90 days.[8] Indeed, the Commission may adopt additional, redundant safeguards to enforce certain nondiscrimination requirements in Section 272(e), such as reporting requirements being considered in CC Docket No. 96-149.[9] The potential consequences and penalties for noncompliance are severe and include Title V forfeitures and revocation of a BOC's in-region interLATA service authority.

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[4] Non-Accounting Safeguards Order, ¶¶ 216-218.

[5] Report and Order, ¶ 122.

[6] 47 U.S.C. § 271(d)(1) & (3).

[7] 47 C.F.R. § 53.209.

[8] 47 U.S.C. § 271(d)(6)(B).

[9] Non-Accounting Safeguards Order, ¶¶ 368-382.

While a nondiscrimination requirement alone is sufficient to ensure that the terms and conditions are made generally available to a substantial number of third parties, and thus constitute a prevailing price, the other safeguards under Sections 271 and 272 provide more than adequate assurance that the prevailing price will be a reliable measure of value for purposes of the affiliate transaction rules.

In any event, the Commission only adopted a "rebuttable presumption" that the rates for products and services that are subject to Section 272 represent prevailing prices. Therefore, an additional safeguard exists in that this presumption could be rebutted by appropriate evidence that a different rate should be the prevailing price.

MCI claims that the prices established pursuant to Section 272 might not be reliable because some services will only be purchased by the BOC's affiliates.[10] MCI explains that it is concerned about shared services which a BOC might tailor to meet the needs of its affiliates and which a third party might not want to purchase. Thus, the objects of MCI's concern are transactions involving shared administrative services that should not be the subject of Section 272 at all. These are the types of internal corporate services that a family of companies provides to itself to support the day-to-day management of its internal affairs. If the Commission had construed Section 272(c)(1) as not applying to corporate shared administrative services, as argued by SBC[11] and others in CC Docket No. 96-149, MCI would have no basis at all for arguing that the Section 272 exception should be eliminated.

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[10] MCI Petition for Reconsideration at 2-3.

[11] SBC Reply Comments, CC Docket No. 96-149, filed August 30, 1996, at 10-11.

However, even in the case of shared administrative services, a BOC that establishes a low price with its Section 272 affiliate runs the risk that a competitor will take the service. By rejecting arguments that applying Section 272(c)(1) to shared administrative services is nonsensical, the Commission indicated its belief (or its interpretation of a Congressional belief) that the risk that a competitor would avail itself of those services is genuine.

GTE observes that local exchange carriers ("LECs") are subject to similar nondiscrimination requirements under state law.[12] In fact, there are other nondiscrimination requirements under federal[13] and state laws[14] that would require LECs to charge the same price for the same service charged to or by an affiliate. These other statutes also assure that affiliates and non-affiliates alike pay the same prevailing price. The Commission should expand the exception to the 50% threshold to include a rebuttable presumption that any such federal or state nondiscrimination requirements establish a prevailing price. By expanding the exception, the Commission would be applying it more equitably to all LECs, as suggested by GTE.

## II. COX'S PETITION SHOULD BE REJECTED.

Cox asserts that the Report and Order does not provide sufficient safeguards for nonregulated activities, and wireless and video activities specifically.[15] It also asks that the

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[12] GTE Petition for Reconsideration at 5.

[13] See, e.g., 47 U.S.C. §§ 224, 251(c)(2)(D) & (c)(3).

[14] See, e.g., Sections 3.208(b), 3.502(d) & 3.554(a)(1) of the Texas Public Utility Regulatory Act of 1995, Tex. Stat. Ann. art. 1446c-0, §§ 3.208(b), 3.502(b), & 3.554(a)(1).

[15] Consolidated Petition for Reconsideration, Cox Communications, Inc., CC Docket Nos. 96-149 and 96-150, filed February 20, 1997 ("Cox Petition").

Commission make clear that the Report and Order will not prejudice the outcome of pending rulemakings as they pertain to cost allocation rules for video programming and wireless services.[16]

Cox asserts that the Commission has found that the existing accounting safeguards are not sufficient. Cox relies merely on the Commission's tentative conclusions in other proceedings and Cox's own comments in the cited proceedings. Contrary to Cox's statements, a Commission tentative conclusion is just that -- tentative. A tentative conclusion in a separate rulemaking cannot override Commission findings based on the record in this proceeding. The Commission will consider the complete record in the other rulemakings cited by Cox and decide based on the relevant record therein.

In this proceeding, the Commission considered the relevant sections of the 1996 Act and the record evidence. On that basis, the Commission concluded that its "existing cost allocation and affiliate transaction rules, as modified [by the Report and Order], are appropriate for any of the new activities described in Sections 260 and 271 through 276."[17] The Commission found that the existing cost allocation rules and the affiliate transactions rules, as modified, would adequately address cross-subsidy concerns associated with new competitive opportunities created by the 1996 Act. No structural or additional nonstructural safeguards are necessary.[18] Cox's Petition presents nothing new to support a change in that determination.

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[16] Id. at 2-5 (citing Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, Notice of Proposed Rulemaking, 11 FCC Rcd 17211 (1996) and Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Notice of Proposed Rulemaking, 11 FCC Rcd 16639 (1996)).

[17] Report and Order, ¶ 26.

[18] Id. ¶¶ 25-26.

Cox's assertion that current rules were not designed to accommodate a LEC's use of the same network facilities to provide competitive and noncompetitive offerings is incorrect. Part 64 is designed for that exact purpose. The Joint Cost Order and subsequent decisions in Docket No. 86-111 explain that the peak relative nonregulated usage allocator will "assure proper allocation of long-term investment to new nonregulated services [by requiring] that central office equipment and outside plant investment be allocated based on forecast, rather than current, relative use."[19] The cost allocation rules require carriers to forecast both regulated and nonregulated usage of common central office and outside plant over a three year period. Using these forecasts, carriers determine the point during the three year period at which nonregulated use will constitute the greatest percentage of total use. The ratio of nonregulated use to total use at that point is then used to allocate a portion of the equipment to nonregulated activities.[20]

The Commission finds that it designed the cost allocation rules to accommodate the growth of nonregulated activities and affiliate transactions.[21] The Commission need not explain, as Cox demands, why the cost allocation rules can accommodate increases in BOC nonregulated activities.[22] That is self-evident. The cost allocation system is applicable to any nonregulated activities the BOC undertakes, whether there are many or only a few. The number of activities or amount of investment has no material impact on the efficient functioning of an allocation mechanism.

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[19] Joint Cost Reconsideration Order, 2 FCC Rcd 6283, 6285 ¶ 15 (footnote omitted).

[20] Id. at 6285 ¶ 17.

[21] Report and Order, ¶ 26.

[22] Cox Petition at 6-8.

The Commission should similarly reject Cox's demand for separate reporting of service-specific costs for each discrete nonregulated business activity.[23] Cox's motivation is clearly stated: "Without further detail it is impossible to identify service-specific costs . . .."[24] No additional reporting is necessary. The existing CAM and ARMIS reporting requirements, along with the Commission's audit authority, are more than sufficient to accomplish the intended task of the cost allocation rules. Competitors should not have access to competitively useful service-specific cost information. The Commission's reporting requirements should continue to protect such information, especially from competitors.

## III. THE COMMISSION HAS PREVIOUSLY REJECTED A SEPARATE BOOKS REQUIREMENT.

APCC requests reconsideration of the Commission's decision to not require BOCs to maintain separate books of account for their nonregulated payphone services.[25]

That decision was made in the Payphone Reclassification proceeding and the arguments APCC presents here are the same ones it presented there.[26] The Commission clearly rejected APCC's position on requiring BOCs to use separate books for their nonregulated payphone

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[23] Id.

[24] Id. at 7.

[25] Petition for Partial Reconsideration of the American Payphone Communications Counsel, February 20, 1997 at 4 ("APCC's Petition").

[26] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Reclassification Report and Order"); *recon.*, FCC 96-439, released November 8, 1996 ("Payphone Reclassification Reconsideration Order"). In fact, to present its argument, APCC attaches pertinent sections of the pleading and appellate brief from the payphone proceeding. APCC Petition, Attachments 1 and 2.

operations.[27] Carriers may only use separate books for activities of an operating division that has no joint and common use of assets or resources with the LEC.[28]

APCC does not provide any new basis for the Commission to overturn its well-established rules on separate books. Besides, a rule that allowed a separate set of books when there are "minor" joint and common costs would be less clear than the existing rule and subject to future interpretation and disputes. APCC's Petition should be summarily denied.

## IV. CONCLUSION.

The Section 272 exception makes sense. Section 272 assures that the same terms and conditions are made generally available to a substantial number of third parties. Given the regulations and enforcement mechanisms adopted under Section 272, the reliability of the prevailing price will be unquestionable. By adopting the Section 272 prevailing price exception, the Commission has modified the accounting safeguards meticulously to reflect that the Section 272 nondiscrimination requirements are more than sufficient safeguards for these types of transactions. Rather than eliminate such a reliable measure of value, as requested by MCI, the Commission should expand the exception to include other similar state and federal nondiscrimination requirements applicable to BOCs and/or other LECs. The Commission should reject Cox's Petition as well; as it presents nothing new to support a reversal of the Commission's conclusion that the existing accounting safeguards, as modified, are adequate to the task of preventing cross-subsidy at the expense of the regulated ratepayers. Finally, the Commission

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[27] Payphone Reclassification Report and Order, ¶ 162; Payphone Reclassification Reconsideration Order, ¶¶ 172, 178.

[28] Joint Cost Order, ¶ 307.

should reject APCC's Petition, including its attempt to challenge indirectly the Commission's recent rulings in the Payphone Reclassification proceeding.

Respectfully submitted,

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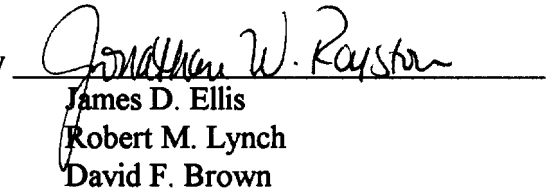
By 

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April 2, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-150 has been filed this 2cd day of April, 1997 to the Parties of Record.

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